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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/555,987	09/11/2000	John P. Vanden Heuvel	7024465PUR99	9345

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05/01/2002

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EXAMINER

HUI, SAN MING R

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 05/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/555,987

Applicant(s)

VANDEN HEUVEL ET AL.

Examiner

San-ming Hui

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 03 April 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-21.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

RUSSELL CRAVERS
PRIMARY EXAMINER
GROUP 1200

Advisory Action

Continuation of 5):

Applicant's remarks filed April 3, 2002 regarding Examiner's employment of de Boer et al. in a flawed obviousness rejection against the claimed invention have been considered but are not found persuasive. de Boer et al. clearly teaches a motivation for adding conjugated linoleic acid into a milk product (See de Boer et al. claims 1-4, particularly claims 2 and 4). Those fatty acids herein claimed by Applicants are taught by de Boer et al. to reduce or prevent cardiovascular diseases, atopies, rheumatic disorders and **diabetes**. (See de Boer et al., col. 1, line 35-43). In other words, de Boer et al. clearly teaches and suggests that linoleic acids, including conjugated linoleic acids, can prevent and reduce diabetes. (See final rejection mailed December 5, 2001).

Applicant's remarks regarding Statler et al. failure to teach the various fatty acids to be useful in treating diabetes have been considered but are not found persuasive. These remarks are not seen to be relevant to the basis of the rejection under 35 USC 103 in the final rejection mailed December 5, 2001. Statler et al. teaches a method of adding linoleic acid compounds into animal feed and cow's milk (see particularly claim 1). Statler et al. also teaches the linoleic acid compounds to be used may include *trans,cis*-9,11-octadecadienoic acid or *cis,cis*-9,11-octadecadienoic acid or *trans,cis*-10,12-octadecadienoic acid (See particularly col. 5, line 51 to col.6 line 50). Therefore, one of ordinary skill in the art would have been motivated to employing

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linoleic acids, including those specific linoleic acids of Statter et al., in the method of treating diabetes. See the final rejection mailed December 5, 2001.

Since no proposed amendment was filed April 3, 2002, the rejections set forth in the previous office action mailed December 5, 2001 remain. No new unanswered rebuttal argument is seen to be present herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (703) 305-1002. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

San-ming Hui
April 25, 2002


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200